

## Fair Political Practices Commission

**To:** Chairman Randolph; Commissioners Blair, Downey, Karlan and Knox

**From:** Luisa Menchaca, General Counsel  
Lawrence T. Woodlock, Senior Commission Counsel

**Subject:** Pending Litigation

**Date:** December 23, 2003

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### 1. *California ProLife Council, Inc. v. Karen Getman et al.*

This case is a challenge to the Act's reporting requirements regarding express ballot measure advocacy. On October 24, 2000 the district court dismissed certain counts for standing and/or failure to state a claim. On January 22, 2002, the court denied a motion for summary judgment filed by plaintiff, and granted the FPPC's cross-motion. The Court entered judgment on January 22, 2002, and plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeal. The appeal was briefed by the parties, and by Amici The Brennan Center for Justice and the National Voting Rights Institute (joining in one brief) and the states of Washington, Nevada and Oregon (joining in one brief.) The court heard oral argument on February 11, and rendered its decision on May 8, 2003. The court rejected plaintiff's legal claims, affirming that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. The court remanded the matter back to the trial court to determine whether California can establish a state interest sufficient to support its committee disclosure rules, and to determine whether the state's disclosure rules are properly tailored to that interest. To permit more time for discovery, the court issued an amended Scheduling Order on October 21, providing that discovery will extend to May 17, 2004, while discovery relating to expert witnesses will conclude on August 20, 2004. Dispositive motions, if any, will be heard no later than October 29, 2004. Trial is now set for March 7, 2005.

### 2. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions. The suit also alleges that the Agua Caliente Band failed to timely disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. The Agua Caliente Band filed a Motion to Quash Service for Lack of Personal

Jurisdiction, alleging that it is not required to comply with the Political Reform Act because of tribal sovereign immunity. A hearing on that motion was held on January 8, 2003, before the Honorable Loren McMaster, in Department 53 of the Sacramento County Superior Court. On February 27, the court ruled in the Commission's favor. On April 7, 2003, the Agua Caliente Band filed a petition for writ of mandate in the Third Appellate District of the Court of Appeal challenging the decision of the trial court. The petition was summarily denied on April 24, 2003. On May 5, the Agua Caliente Band filed a Petition for Review in the California Supreme Court. On June 23, 2003, the court extended the deadline by which it must grant or deny review to August 1, 2003. On July 2, 2003, the court requested the FPPC to file an Answer to the Agua Caliente Band's Petition for Review by July 11, 2003. The FPPC filed its letter brief Answer on July 11, 2003. The Agua Caliente Band filed its reply on July 14, 2003. On July 23, 2003, the Supreme Court granted review and transferred the case to the Third District Court of Appeal, directing that court to vacate its original order and to issue an order directing the Sacramento County Superior Court to show cause why the relief sought in the Agua Caliente Band's petition should not be granted. The parties have completed briefing on the petition for writ of mandate, and two amicus briefs have been filed in support of the Commission's position by the Attorney General and Common Cause. The Superior Court has continued a status conference that was originally set for December 4, 2003, to January 29, 2004.

### *3. FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria*

The FPPC alleges in this action that the Santa Rosa Indian Community of the Santa Rosa Rancheria (the Santa Rosa Rancheria) failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and statewide propositions. The suit also alleges that the Santa Rosa Rancheria failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended to October 7, 2002. On January 17, 2003, the Santa Rosa Rancheria filed a Motion to Quash Service of Summons and First Amended Complaint. This motion is based upon its claim of tribal sovereign immunity from suit. The FPPC's response to the motion was filed on February 10, 2003. The matter was originally scheduled to be heard on February 20, 2003, but was continued to March 6, 2003 at the request of Defendant. The matter was heard on that date before the Honorable Joe S. Gray in Department 54 of the Sacramento County Superior Court, and on May 13, 2003 the court entered its order in favor of Defendant. On July 14, 2003, the FPPC filed its Notice of Appeal in the Sacramento County Superior Court, thus initiating an appeal of that court's decision in the Third District Court of Appeal. On November 7, 2003 the Commission filed its opening brief in the appeal. The due date for the response brief has been extended to January 9, 2004.

### *4. Larry R. Danielson v. FPPC*

This is a Petition for Writ of Mandate filed November 7, 2002 in the Sacramento County Superior Court, directed to the proposed decision of an Administrative Law Judge which had not yet come before the Commission. The FPPC filed a preliminary opposition to the petition on

November 12, 2002, asserting that Danielsén had failed to exhaust his administrative remedies, since the Commission has not yet adopted, modified or rejected the proposed decision of the Administrative Law Judge, rendering the Petition premature. The Commission adopted the proposed decision at its December, 2002 meeting. On November 7, 2003, after extensive briefing and a hearing, Judge Lloyd Connelly denied the petition on the merits, after commenting that, procedurally, the petition was also doubtful. Significantly, the Court upheld the Commission's interpretation of section 87302 as permitting agencies to designate employees on their conflict of interest codes using either the employees' civil service classification or their job duties ("working title"). The Attorney General's office is co-counsel in this matter.

5. *FPPC v. American Civil Rights Coalition, et al.*

In a lawsuit filed Sept. 3, the FPPC alleges that the American Civil Rights Coalition ("ACRC") and its CEO Ward Connerly violated state campaign disclosure laws by failing to file campaign statements reporting the source of almost \$2 million contributed to promote the passage of Proposition 54 on the Oct. 7 ballot. A hearing on the FPPC's motion for a preliminary injunction was originally scheduled to be heard on Sept. 26, but was rescheduled for September 19 at the request of FPPC attorneys. An Application for Intervention in this lawsuit was filed on September 16 by a group known as the "DOE Class" of past and potential contributors to ACRC, seeking among other things to postpone the September 19 hearing to an unspecified later date. The court went forward with the injunction hearing on September 19, and denied the FPPC's motion on the ground that the factual record was not sufficiently developed to warrant a preemptive remedy. Defendants next brought a special motion to strike plaintiffs' complaint. The FPPC filed its opposition to that motion on November 10, 2003. On November 20, the court denied the motion in its tentative ruling. On December 1, 2003, the superior court adopted the tentative decision, denying defendants' motion to strike the complaint. On December 3, 2003, defendants filed an appeal from the court's denial of their motion to strike.

6. *FPPC v. Caroline Getty and Wild Rose, LLC*

In a lawsuit filed October 16, 2003, the FPPC alleges that Caroline Getty and her wholly owned company Wild Rose, LLC violated campaign disclosure laws by making two \$500,000 contributions to the Nature Conservancy Action Fund of California in the name of Wild Rose, LLC, without disclosing that Ms. Getty was the true source of the contributions. The first contribution in 2000 was in support of the Propositions 12 & 13 campaign. The second contribution in 2002 was in support of the Proposition 40 campaign. Defendants have filed a demurrer to the complaint. A brief opposing the demurrer, which will be heard on January 16, is due by January 6, 2004. Defendants have since added a special motion to strike under Code of Civil Procedure § 425.16, which is also set to be heard on January 16, 2004.

7. *Evans v. FPPC, et al.; Walters v. FPPC, et al.*

The plaintiffs in these cases are candidates for the State Assembly who will appear on the March primary ballot in their respective races. Each sought and obtained writs from the Sacramento Superior Court in December on an emergency basis allowing plaintiffs to amend their Form 501, Candidate Statement of Intention, to change their respective designations regarding the acceptance or rejection of voluntary expenditure limits. The Secretary of State and the FPPC opposed the granting of the writs and the FPPC filed a petition for writ of mandamus in the Third District Court of Appeal to overturn the lower court's decision. The writ petition was denied without comment, with one judge indicating he would grant the writ. The FPPC will consider appealing the Superior Court's ruling at the January meeting.